MEMORANDUM DECISION

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IN THE

COURT OF APPEALS OF INDIANA

D.M.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

November 2, 2022

Court of Appeals Case No. 22A-JV-428

Appeal from the Marion Superior Court

The Hon. Danielle Gaughan, Judge

The Hon. Tara Y. Melton, Magistrate

Trial Court Cause No. 49D15-2107-JD-6402

Bradford, Chief Judge

Case Summary[1]

[1] At 3:30 a.m. on May 27, 2021, two Indianapolis Metropolitan Police Officers responded to a report of a disturbance at a gas station in a high-crime area. The officers arrived and noticed a group walking away from the nearby gas station, some of whom matched the general description of those in the reported disturbance. D.M. was hiding in the shadows between two buildings and appeared to be attempting to conceal something in his pants. D.M. fled on foot, and after a brief pursuit, the officers detained him and discovered a handgun and several bindles of cocaine on his person.

[2] The State petitioned to have D.M. adjudicated a juvenile delinquent for committing what would be, if committed by an adult, Level 5 felony dealing in cocaine, Level 5 felony cocaine possession, Class A misdemeanor dangerous possession of a firearm, and Class A misdemeanor carrying a handgun without a license. The juvenile court denied D.M.'s motion to suppress the evidence recovered from his person. After a fact-finding hearing, the juvenile court found all delinquency allegations to be true. The juvenile court found that D.M., in committing the instant delinquent acts, had also violated the terms of probation in another case and placed him on probation with a suspended

[1] We held oral argument in this case on October 20, 2022, at Batesville High School. We would like to commend counsel for the quality of their presentations and extend our gratitude to the students, administration, faculty, and staff of Batesville High School for their assistance and hospitality.

commitment to the Department of Correction ("DOC"). D.M. contends that the trial court abused its discretion in admitting the evidence found on his person. Because we disagree, we affirm.

Facts and Procedural History

[3] On May 27, 2021, at approximately 3:30 a.m., Indianapolis Metropolitan Police Officer Jon King was patrolling a known high-crime area in his marked vehicle when he was dispatched to a BP gas station at 2427 West Washington Street to investigate a disturbance involving two black males and one white male. When the uniformed Officer King arrived, the trio was no longer there, so he left to investigate a group he had just seen walking away, which had consisted of two black males, one white male, and one white female. As Officer King approached the group, he noticed that while three of them were walking on the sidewalk, the fourth, a "young black male" who turned out to be D.M., was hiding in the shadows between two buildings on the north side of Washington Street with his hands down his pants, which indicated to Officer King that he "probably got a gun or something in his– in the front of his pants." Tr. Vol. II p. 16, 73. Officer Dalton Anderson, who had also responded to the dispatch and was also fully uniformed and driving a marked police vehicle, noticed D.M. "continually […] reaching towards the front of his body into his pants pockets, into his waistband" and that he "seemed to generally be trying to duck away from [the officers]." Tr. Vol. II p. 30.

[4] Officer King drove to an alleyway behind the buildings and heard from Officer Anderson that D.M. was running south. By the time Officer King responded,

D.M. was running west on Washington Street, still with his hands down his pants. Officer King pursued D.M. and managed to get in front of him, at which point D.M. turned north. Officer Anderson had been ordering D.M. to stop during the pursuit. Officer King exited his vehicle and pursued D.M. on foot. Shortly thereafter, Officer Anderson tackled D.M. after warning him that he would be tased if he did not stop, and D.M. was handcuffed. Officer Anderson found a handgun in D.M.'s pantleg and a "multitude of clear plastic baggies with a white powdery crystal-like substance in them. All individually wrapped." Tr. Vol. II p. 56.

[5] On July 30, 2021, the State petitioned to have D.M. adjudicated a juvenile delinquent for committing what would be, if committed by an adult, Level 5 felony dealing in cocaine, Level 5 felony cocaine possession, Class A misdemeanor dangerous possession of a firearm, and Class A misdemeanor carrying a handgun without a license. On October 13, 2021, D.M. moved to suppress the evidence discovered following his seizure. Following a suppression hearing, the juvenile court denied D.M.'s motion to suppress. Following a fact-finding hearing at which D.M. objected to the admission of all evidence gathered following his seizure, the juvenile court found all delinquency allegations to be true. On February 14, 2022, the juvenile court found that D.M., in committing the instant delinquent acts, had also violated the terms of probation in another case and placed him on probation with a suspended commitment to the DOC.

Discussion and Decision

[6] D.M. challenges the admission of evidence discovered on his person. Because D.M. appeals following the disposition of his delinquency case, the issues he raises will be reviewed as a challenge to the admission of evidence at his fact-finding hearing. *See, e.g.*, *R.B. v. State*, 43 N.E.3d 648, 650 (Ind. Ct. App. 2015). The constitutionality of a search is a pure question of law and is reviewed *de novo* on appeal. *Wright v. State*, 108 N.E.3d 307, 313 (Ind. 2018). That said, juvenile courts have broad authority to admit or exclude evidence at fact-finding, *Johnson v. State*, 157 N.E.3d 1199, 1203 (Ind. 2020), and a ruling on the admission of a particular piece of evidence is reviewed for an abuse of that discretion. *Clark v. State*, 994 N.E.2d 252, 259–60 (Ind. 2013). We will consider the evidence admitted at the fact-finding hearing and any evidence from the suppression hearing that is not in direct conflict with the evidence introduced at the fact-finding. *Id*. at 259 n.9. Because juvenile courts are best positioned "to weigh evidence, assess the credibility of witnesses, and draw inferences," we will not reweigh evidence or second-guess the credibility of witnesses on appeal. *Moshenek v. State*, 868 N.E.2d 419, 424 (Ind. 2007). A juvenile court's ruling on the admissibility of evidence will be reversed "only if the ruling is clearly against the logic and effect of the facts and circumstances before the court and the error affects the juvenile's substantial rights." *R.B.*, 43 N.E.3d at 650 (citing *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014)).

I. Fourth Amendment

[7] D.M. contends that Officers King and Anderson lacked reasonable suspicion to detain him for investigatory purposes, generally referred to as a *Terry* stop.

Terry stops provide police with an intermediate investigative step between a consensual encounter and outright arrest that permits officers to briefly seize a suspect for the purpose of confirming or dispelling suspicion that "criminal activity is afoot." *Platt v. State*, 589 N.E.2d 222, 226–27 (Ind. 1992) (citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). For an officer's suspicion to be reasonable, he must be relying on something more than a mere "hunch," but needs "considerably less than proof of wrongdoing by a preponderance of the evidence," *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989), and less proof than probable cause. *Marshall v. State*, 117 N.E.3d 1254, 1259 (Ind. 2019). What is required for reasonable suspicion to exist is "a particularized and objective basis for suspecting the person stopped of criminal activity." *Kansas v. Glover*, 140 S. Ct. 1183, 1187 (2020).

[8] There is no precise, mathematical formula dictating when an officer's suspicion crosses the line from an unspecific hunch to reasonable suspicion. *U.S. v. Arvizu*, 534 U.S. 266, 274 (2002) ("Our cases have recognized that the concept of reasonable suspicion is somewhat abstract."). The standard articulated by the United States Supreme Court is a fact-sensitive inquiry that assesses the totality of the circumstances presented in a given case. *Navarette v. California*, 572 U.S. 393, 397 (2014); *U.S. v. Cortez*, 449 U.S. 411, 417 (1981); *Wilson v. State*, 670 N.E.2d 27, 31 (Ind. Ct. App. 1996). Even where specific behaviors are insufficient on their own to establish reasonable suspicion, they may create enough suspicion to justify an investigatory stop when considered in combination with other factors. *Sokolow*, 490 U.S. at 8–11. Officers are

permitted to draw upon their personal experience and specialized training, *Arvizu*, 534 U.S. at 273, "commonsense judgments and inferences about human behavior," *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000), and "practical considerations of everyday life," *Navarette*, 572 U.S. at 402, when making the decision to initiate an investigatory stop.

[9] We have little hesitation in concluding that Officers King and Anderson had a reasonable basis for detaining D.M. First, the appearance of D.M. and his companions generally matched the report of persons involved in a disturbance, and he was first encountered a short distance from the location of the reported disturbance. This, along with evidence that D.M. and his companions were the only persons in the area at the time, supports a reasonable inference that they were the persons involved in the disturbance at the BP station. Second, D.M. and his companions were found in a known high-crime area, with the BP station in question generating near-nightly reports of criminal activity. The above evidence was likely sufficient to support an investigatory detention to determine what, if any, part D.M. had in the reported disturbance in a high-crime area, but there is more.

[10] D.M.'s unprovoked flight from the uniformed officers in marked cars also contributed to the officers' reasonable suspicion that criminal activity was afoot. The United States Supreme Court has recognized that "[h]eadlong flight[,]" such as occurred in this case, is the "consummate act of evasion[,]" *Wardlow*, 528 U.S. at 124, and the Indiana Supreme Court has acknowledged that "[f]light at the sight of police is undeniably suspicious behavior." *Platt*, 589

N.E.2d at 226–27. D.M. was first observed hiding in shadows between two buildings and ran at the sight of the police before the uniformed officers even attempted to speak with him, stopping only when threatened with a taser. As the United States Court of Appeals for the Sixth Circuit has observed, "flight from a clearly identified law enforcement officer may furnish sufficient ground for a limited investigative stop." *U.S. v. Pope*, 561 F.2d 663, 669 (6th Cir. 1984).

[11] Finally, Officers King and Anderson both observed D.M., a young male, with his hands down the front of his pants, an action both knew from training and experience was consistent with a person attempting to conceal a firearm. Officer King testified that D.M.'s actions indicated that he "probably" had a "gun or something in his- in the front of his pants." Tr. Vol. II p. 16. Officer Anderson testified that D.M. "kept grabbing the front of his pants and grabbing something in his waistband[,]" which "is typically where people without a proper holster for a firearm, tend to carry said firearm." Tr. Vol. II pp. 30–31. The fact that D.M. appeared to be concealing a firearm and, as a young male, was likely a juvenile who could not legally possess one,[2] supports a conclusion that there was reasonable suspicion that a crime was being committed. In summary, D.M.'s close proximity to a reported disturbance, the fact that he and his companions matched the descriptions of the participants in the disturbance, his presence in a high-crime area, his headlong flight at the sight of clearly-

[2] Indiana Code section 35-47-10-5 provides, in part, that "[a] child who knowingly, intentionally, or recklessly possesses a firearm for any purpose other than a purpose described in section 1 of this chapter [(none of which apply in this case)] commits dangerous possession of a firearm, a Class A misdemeanor."

identified police officers, and indications that he could be in illegal possession of a firearm all support the conclusion that Officers King and Anderson had ample reasonable suspicion for a *Terry* stop. *See, e.g.*, *Murdoch v. State*, 10 N.E.3d 1265, 1268 (Ind. 2014) (concluding that reasonable suspicion existed where "the defendant ran when the officer appeared, engaged in furtive and evasive activity in a high-crime area, was uncooperative, and matched the description of the suspect").

[12] D.M. attempts to analogize this case to *Florida v. J.L.*, 529 U.S. 266 (2000), and several Indiana cases, all of which are readily distinguished. In *J.L.*, the United States Supreme Court held that an anonymous tip that a particular person was carrying a handgun was insufficient to support a finding of reasonable suspicion. *Id*. at 268–74. The facts of this case, however, are a far cry from those in *J.L.*, as the officers' belief that D.M. might be in possession of a handgun was based on their in-person observations and was accompanied by his fitting the description of a person who had been involved in a nearby disturbance and his headlong flight. D.M. also relies on our opinion in *Stalling v. State*, 713 N.E.2d 922 (Ind. Ct. App. 1999), in which we determined that police lacked reasonable suspicion to detain Stalling when he turned, placed something in his waistband, and walked away from an officer. *Id*. at 923. The facts of that case, however, lacked any connection to possible prior criminal activity or headlong flight, as we have here. *Pinner v. State*, 74 N.E.3d 226 (Ind. 2017), is distinguishable because, in that case, there was no reason to believe that the possession of the handgun in possession was illegal, *id*. at 232, while

here, there was reason to believe that D.M. was a minor and therefore in illegal possession. Finally, D.M. cites to *Bridgewater v. State*, 793 N.E.2d 1097 (Ind. Ct. App. 2003), *trans. denied*, for the proposition that merely running away from police in a high-crime area is insufficient to justify a seizure. *Id*. at 1098–99. *Bridgewater*, however, lacked the suspicion about previous possible criminal activity and D.M.'s attempt to conceal something in his pants that occurred in this case. The authority cited by D.M. does not help him.

II. Article I, Section 11

[13] Article 1, Section 11, of the Indiana Constitution, like the Fourth Amendment, protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure[.]" Although Article 1, Section 11, and the Fourth Amendment share similar language and protect similar interests, we interpret our state constitutional provision independently. *Randall v. State*, 101 N.E.3d 831, 841 (Ind. Ct. App. 2018), *trans. denied*. Rather than focusing on the defendant's reasonable privacy expectations, we look at the actions of the officer and the totality of the circumstances to evaluate the reasonableness of the officer's actions. *Id*. As part of the examination of the totality of the circumstances, we consider: "1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005).

[14] Here, the degree of suspicion was high. D.M. matched the description of a person who had participated in a reported disturbance and was found in close proximity soon after the report. When D.M. saw police, he fled at a run before the officers even had a chance to speak with him, continued to flee despite repeated demands to stop, and only stopped when threatened with a taser. Finally, the visibly-young D.M. appeared, before and throughout the pursuit, to be attempting to conceal contraband in his pants, in a manner frequently used by those attempting to conceal a handgun. This factor tips the balance strongly in favor of reasonableness.

[15] The degree of intrusion in this case was moderate from D.M.'s perspective. *See Duran v. State*, 930 N.E.2d 10, 18 (Ind. 2010) (noting that the degree of intrusion is assessed from the defendant's point of view). While D.M.'s activities were disrupted by the pursuit, that was because of his choice to attempt to flee. After D.M.'s apprehension, he was handcuffed while he was searched, but it is reasonable to infer that the officers took that measure, in large part, due to his unprovoked flight, and, in any event, that degree of intrusion strikes us as reasonable considering that he was suspected of illegally possessing a handgun.

[16] Finally, the needs of law enforcement weigh in favor of an investigatory detention. Both officers observed D.M. behaving in a fashion consistent with attempting to conceal a handgun, and it was likely, given D.M.'s apparent age, that any possession by him of a handgun was illegal. *See* Ind. Code § 35-47-10-5(a). Moreover, there was reason to believe that D.M. had been involved in the reported disturbance, and law enforcement had an interest in ensuring that the

disturbance did not escalate. In summary, because all three of the *Litchfield* factors weigh in favor of reasonableness, we conclude that the officers' seizure of D.M. did not violate Article 1, Section 11, of the Indiana Constitution.

[17] We affirm the judgment of the juvenile court.

Pyle, J., and Weissmann, J., concur.